

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
DECEMBER 12, 2013
5:00 P.M.**

Voelliger called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Johnson, Spranger, Voelliger
ABSENT: Gallagher
STAFF: Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of October 10, 2013.

On motion by Falk, seconded by Spranger, that the minutes of the meeting of October 10, 2013 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- d. Case 13-066; 2999 Middle Road (R-1) - A request for a variance to allow a 5-foot high fence along the Middle Road property line, submitted by the City of Bettendorf/Palmer Hills Golf Course.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes. He indicated that he had spoken to the manager at Chateau Knoll Apartments who had indicated support for the request. Soenksen explained that the fencing contractor had already installed the taller fence posts with staff's permission because of the possibility of the ground's freezing.

Voelliger asked how tall the previous fence was. Soenksen stated that it was 4 feet high.

Voelliger asked if there was anyone present wishing to speak in favor of the request.

Tim Johansen, representing the applicant, explained that when the new, wider recreational trail along Middle Road was installed it was moved further toward the golf course. He indicated that a substantial portion of the length of the new location of the fence slopes downward. Johansen stated that because of the slope, the 5-foot high fence would appear as though it is only 4 feet high in some places.

Johnson asked for clarification of where the slope is located along Middle Road. Johansen indicated that approximately one-third the distance of the property measured from the eastern end has a substantial grade change.

Johnson asked how much closer the proposed fence is to the new recreational trail. Soenksen explained that the fence would be 1 foot from the sidewalk, adding that it will actually be further from Middle Road than the previous fence because of the widening of the trail from 4 feet to 10 feet.

Johnson asked why the fence couldn't vary in height to account for the grade change. Falk commented that he believes that there may be a safety issue because of the possibility that a stray golf ball could interfere with pedestrians on the recreational trail. He added that a taller fence may also discourage golfers from climbing it to retrieve lost golf balls.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

On motion by Spranger, seconded by Falk, that a variance to reduce the required rear yard setback from 40 feet to 10 feet to allow a 5-foot high fence along the Middle Road property line be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- c. Case 13-065; 6655 Crow Creek Road (A-2) - A request for a variance to reduce the required rear yard setback from 40 feet to 10 feet to allow for a 14-foot by 50-foot house addition, submitted by Bob and Martha Border.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

Falk asked if there is a required separation of the flood plain from the proposed addition. Soenksen explained that construction is allowed up to the edge of the flood zone.

On motion by Johnson, seconded by Falk, that a variance to reduce the required rear yard setback from 40 feet to 10 feet to allow for a 14-foot by 50-foot house addition be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- b. Case 13-064; 2777 - 18th Street (C-2) - A request for a variance to increase the allowable square footage of a parking instructional sign from 9 square feet to 30 square feet and to allow two non-street frontage on-premises identification signs (building-mounted), submitted by Conrad Wagner.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #7 to these minutes.

Voelliger asked if there was anyone present wishing to speak in favor of the request.

Dragan Dabizljevic, representing the applicant, explained that the proposed parking directional sign would be located at the shared entrance with Mel Foster Company that is located on the south side. He added that the sign will help alleviate any confusion by motorists and delivery drivers who may be unclear as to which entrance they should use. Dabizljevic indicated that the northern entrance will be used as the exit from the property. He stated that his goal is to encourage a one-way traffic pattern through the site.

Johnson asked how the proposed parking instructional sign would compare in size to the recently-approved signs that are located at Bettendorf High School. Soenksen explained that they would be approximately half that size, adding that Trinity at Terrace Park also has additional parking instructional signage.

On motion by Spranger, seconded by Johnson, that a variance to increase the allowable square footage of a parking instructional sign from 9 square feet to 30 square feet and to allow two non-street frontage on-premises identification signs (building-mounted) be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- a. Case 13-053; 2501 - 53rd Avenue (C-2) - A request for a special use permit for an outdoor service area to be similar and compatible to the uses existing within the premises, submitted by The Clubhouse. (Deferred from meeting of October 10, 2013)

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #9 to these minutes. He indicated that he had received 3 letters expressing opposition to the request from John Scheetz of 5247 Brentwood Drive, Tom Dilulio of 2483 Lindenwood Drive, and Joseph Sunderbruch of 5311 Glen Eagles Drive. Letters are Annex #10, #11, and #12 to these minutes. Soenksen stated that he had received a letter of support from Chuck Ruhl who is the owner of Crow Ridge Plaza. Letter is Annex #13 to these minutes.

Voelliger asked if there was anyone present wishing to speak in favor of the request.

AJ Paul, co-applicant, indicated that he and his partners do not plan to change their business model if the proposed special use permit is approved. He explained that customers who wish to smoke must now leave their drink unattended and go outside which poses a security concern. He stated that the owners would like customers to be able to take their drink with them to the fenced patio area. Paul stated that the proposed outdoor service area would not generate any additional noise, adding that it is further from the single-family homes than are other existing outdoor service areas nearby. He indicated that the proposed location is further from the homes and that the building itself would block the noise from the outdoor area. He explained that there is an existing covered space in front that would work well for their purposes.

Voelliger asked if there would be drinks service in the outdoor area. Paul stated that at this time there are no plans for alcohol sales that would take place in the outdoor area.

Voelliger asked if The Clubhouse serves food. Paul indicated that no food service is available on-site but that customers are welcome to bring their own or order in.

Voelliger asked if there was anyone present wishing to speak in opposition to the request.

Tyler Driever, 2536 Lindenwood Drive, stated that comments have been made by city staff at council meetings regarding the positive aspects of the applicant's business. He explained that it is his understanding that informal council meetings and retirement parties have been held at The Clubhouse. Driever stated that the mayor had invited the owners and his attorney to a committee of the whole meeting at which council member Greg Adamson planned to discuss the concerns of the neighbors regarding the business.

Driever commented that city officials only see the positive aspects of the business but do not experience the negative impacts that affect the residential neighborhood. He stated that on September 12, AJ Paul was allegedly arrested for public intoxication, tampering with motor vehicles, and harassment of his neighbors. Driever indicated that he requested the police records related to The Clubhouse from April 6, 2011 to September 12, 2013, adding that there were 161 police calls during that time period. He stated that most of them were routine general checks, but that many of them included things such as assault, hit and run, theft, drugs, and disturbance calls made by the neighbors.

Driever stated that while the proposed outdoor service area has been compared to Crust Pizza, he does not believe that the two are remotely similar as Crust is a restaurant, not a bar. He stated that there have been no police calls regarding Crust during that same time period.

Driever stated that he does not believe that the negative aspects of The Clubhouse and their effect on the residential neighborhood should be compounded by allowing the outdoor service area.

Martha Nankivell, 2470 Lindenwood Drive, stated that in 2011 the attorney for The Clubhouse had specifically stated that it would be a golf establishment and not a bar. She indicated that the liquor license is registered under the name Clubhouse Beverage. She stated that when residents make noise complaints, they are asked if they are referring to The Clubhouse bar. Nankivell stated that when the business originally opened, residents had been encouraged to make noise complaints. She explained that recently when she had made a complaint, the officer

who responded had to enter her home with a decibel meter to determine if The Clubhouse was in violation of the noise ordinance. She stated that many more times than not the neighbors do not call because of the intrusion into their privacy.

Nankivell stated that the Board must determine that a particular use will not diminish property values and that it will not impair the public health, comfort, safety, morals, or welfare of the inhabitants of the city. She added that there is no feasible way for staff to monitor the noise disturbances that occur in the late evening and early morning hours. She stated that the level of noise would substantially increase if the outdoor service area is approved, reiterating that the indoor activities are already problematic. Nankivell requested that the Board consider the needs of the residential neighbors as well as the applicant's.

Chris Larson, co-applicant, stated that The Clubhouse is mainly a golf center, adding that the application for an outdoor service had been submitted at the request of their customers. He stated that the business has never exceeded the proscribed noise level indicated in the ordinance when police officers have measured it. Larsen indicated that he is always willing to listen to complaints from the neighbors, adding that the issue is never raised except at public meetings. He explained that he and his partners are attempting to maintain their revenue stream during seasons when outdoor golf is available at other locations.

Lori Hueser, 2514 Lindenwood Drive, stated that the neighbors are not necessarily concerned about the noise level during the day but more about the disturbances that occur between 9 p.m. and 2 a.m. She indicated that she has personally gone to the bar at 10 p.m. to complain about the noise because calling the police is ineffective. She stated when she arrived she had to search for an employee and return to the front of the bar because it was so loud she couldn't be heard. Hueser added that customers who have been fighting behind the building have caused disruptions in the past. She stated that she believes that the initial decision to allow the use was perhaps misguided in light of the disruptions that continually take place.

David Nankivell, 2470 Lindenwood Drive, commented that none of the examples of similar outdoor service areas cited in the staff report border single-family neighborhoods. He stated that the city should not set a precedent of allowing an outdoor service area especially because of the large number of police calls. He reiterated that allowing customers to drink outside would only exacerbate the existing noise and disruption problems caused by noise from inside the building.

Mike Porter, 2558 Lindenwood Drive, stated that the noise and outside disruptions caused by fights in the parking lot, doors slamming, and other activities from The Clubhouse are ongoing and have at times actually caused his house to vibrate. He indicated that the proposed outdoor service area is not at all similar and compatible to the one at Crust. Porter suggested that an audit of the business be conducted because he does not believe that more than 50% of the income generated by The Clubhouse is from the use of the golf simulators. He indicated that the other businesses cited in the staff report as comparables are restaurants with ancillary uses that involve alcohol. Porter stated that in order to consider the golf component of the business as the main one, more than half of the revenue must be generated that way. He reiterated that he believes that more than half of the The Clubhouse's revenue is generated from sales of liquor. Porter stated that he believes that the property values in the neighborhood have been reduced as a result of the proximity of The Clubhouse and the number of police calls of which realtors are aware. He reiterated that moving even a portion of the business activity outside would exacerbate the problem and requested that the Board deny the applicant's request.

Kelly Meyer, 2459 Lindenwood Drive, asked what the hours of operation would be for the proposed outdoor service area. Voelliger explained that if the request is approved, the Board could impose restrictions on the hours of operation. Meyer indicated that customers are patronizing The Clubhouse until 2 a.m. even on Sundays and expressed concern that the patio could be used until that time as well. She explained that because the Crow Ridge development is not yet complete there is a large open space through which sound travels unimpeded.

Voelliger asked Soensken to review the restrictions that were placed on the other business in the area with regard to outdoor service. Soensken explained that service and consumption of alcohol in the outdoor service area at Crust must cease at 10 p.m. on Fridays and Saturdays and at 9 p.m. from Sunday through Thursday.

Voelliger asked for more details regarding the police calls for The Clubhouse as he had been under the impression that there were fewer than have been indicated. Soensken explained that the police have routinely been called to The Clubhouse because of noise issues. He added that sometimes it is because an officer has noticed a problem but most times the call is generated as a result of a complaint. Driever submitted the list of 161 police calls he had referenced earlier. List is Annex #14 to these minutes.

David Nankivell questioned the efficacy of restricting hours of operation with the goal of limiting the use of an outdoor patio where alcohol is consumed.

Hueser stated that it is her opinion that any semblance of control that the neighbors have by way of public meetings will be eliminated if the use is allowed to be expanded to an outdoor area.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

Johnson commented that she has patronized The Clubhouse, commenting that on the weekends there are sometimes DJs and that it is very loud. She added that during the afternoons it is quieter. She stated that the business could not be considered by any reasonable person to be a golf establishment during the late evening and early morning hours.

Spranger asked if the applicant had needed a special use permit or variance to open the business originally. Soensken explained that when The Clubhouse first opened, it had been presented to city officials as being primarily a golf instruction business geared toward customers who wish to golf during the winter.

AJ Paul reiterated that The Clubhouse is a golf business most of the time. He stated that it is a mischaracterization to call it a bar.

Spranger asked if there are limitations on hours of operation for Habanero's. Soensken stated that he is unsure, adding that the statement from the residents who pointed out that the businesses listed in the staff report are not comparable to The Clubhouse is accurate. He indicated that he had been unaware that food is not available for sale there, reiterating that except for one, the businesses listed in the staff report are restaurants. Johnson commented that none of the comparables listed are nearly as close to residential neighborhoods. Falk concurred, adding that he has neither seen, heard, nor read anything that leads him to believe that circumstances have changed since the original request. He indicated that he would be unable to support the approval of the special use permit.

On motion by Falk, seconded by Johnson, that a special use permit for an outdoor service area to be similar and compatible to the uses existing within the premises be denied in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Falk, Johnson, Voelliger
NAY: Spranger

Motion carried.

Decision and Order is Annex #15 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:00 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner